

Massachusetts Department of Conservation and Recreation (DCR) &
Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA)

Off-Highway Vehicle (OHV) Enforcement and Education Working Group

Minutes – October 12, 2007 (Meeting 3 of 4)

Attendees: Kenneth Anderson, President, MA All Terrain Vehicle; Ellen Arnold, Friends Group Alternate; Rebecca Barnes, Western Trails Coordinator, DCR; Bruce Bennett, Major, Office of Environmental Law Enforcement; Gary Briere, Bureau of Recreation Chief, DCR; Jack Buckley, Deputy Director, Division of Fisheries and Wildlife; Priscilla Chapman, Massachusetts Audubon Society; Matt Dudek, Joint Committee on Transportation; Justin Gilardi, Northeast ATVers; Craig Givens, Department of Environmental Protection; Sharl Heller, Friends Group Representative; Michael Labossiere, The Trustees of Reservations; Jack LaLond, DCR; Sandra Marchione, Joint Committee on Transportation; Janet Morrison, Massachusetts Land Trust Coalition; Robert O'Connor, Director Watershed Policy, EOEEA; Curt Rudge, Chief Ranger, DCR; Jim Sherman, President, New England Trail Riders Association; David Shook, Berkshire Trails Council; Randy Toth, Snowmobile Association of Massachusetts; Sergeant Brian Watson, MA State Police

Logistical Support – Lorraine DellaPorta, Massachusetts Office of Dispute Resolution; William Logue, Facilitator, Logue Group; Anita Wysocki, DCR Bureau of Recreation

Welcome and Meeting Purposes

Bill Logue thanked everyone for their time and continued commitment and enthusiasm for this important process. Our mutual goal is to present a recommendation to Secretary Ian Bowles regarding OHV Enforcement, including elements of legislation that will help strengthen OHV laws and regulations. Our suggestions and agreement for legislation needs to reflect a tone that is reasonable and passable.

A document was distributed (see attached) which contained a series of statements or concepts that have been introduced at previous meetings or through member research. The purpose of the document was to allow the group to explore and refine levels of agreement, in each of these focus areas and to determine action items. This document was created by Gary Briere and includes ideas introduced by various members of the working group. The document was used as a guideline for discussions and considered a work in process.

Bob O'Connor expressed appreciation for the progress at the September meeting and reiterated the group's purpose to find agreement on key ideas with the goal of recommending changes to current statutes and regulations at the conclusion of this process. Once we have made a collective recommendation, we can work together to foster support for legislative changes.

New Materials Distributed

Minutes from OHV Working Group meeting on 9/14/07; MA OHV Enforcement Working Group (statement of concepts introduced during prior meetings); Revised OHV Enforcement Working Group members; Massachusetts Recreation Vehicle Safety Laws

Discussion

1. Education and Training

Concept Summary: All persons born after 1/1/1988 will be required to complete safety and responsibility course; certification to be carried on person while riding; education to be funded through manufacturer or other non-public source; manufacturers and dealers will be required to promote responsible riding through documentation at time of purchase; OHV clubs, dealers and others to promote safe responsible use via advertising, education programs and materials, patrols and other means.

- Suggestion: To eliminate any public confusion, we need to draft a clear definition of Off-Highway Vehicle. There was concern that some may think snowmobiles or four-wheel drive motor vehicles may be considered off-highway vehicles. Discussion continued regarding four-wheel drive vehicles and their use on non-maintained town roads would be considered off-highway vehicles. Current DCR regulation states that vehicles over 1000 pounds are not allowed on DCR trails or unpaved roads.
- Strong Agreement – Education should be mandatory and DCR should be involved in curriculum design and course content requirements for “state-certified” curriculum. Education should go beyond driving safety and must include responsible use and respect of wetlands, animal habitats, destruction of turf, public ways, permission of landowner, etc.
- General Agreement (with strong opposition by one member) – All persons born after January 1, 1988 shall be required to attend state certified training prior to operating an OHV. All persons born prior to this date would be grandfathered in without a training requirement. Concern was expressed that a current operator under age 19 might not be aware of the new requirement. Further discussion is needed to determine appropriate measure for requiring training and possible exceptions such as prior experience, motorcycle license exemption, attendance at similar course in another state and proof of prior ATV experience in another state.
- General Agreement: We model the MA course after established courses such as Vermont’s and the National ATV Institute. We will look at what is currently being offered and build on the existing model.
- Strong Agreement: Manufacturers and dealers to be involved with funding and promoting training/education at the time of sale. A concern was expressed that we have been working on this premise yet they have not been involved in this process. It was acknowledged that we need to solicit manufacturer/dealer partnership with training and information distribution. Additionally, we need to explore distribution of information and training opportunities when a private sale occurs.
- Suggestion: DCR should create a comprehensive statewide handbook (perhaps using Iowa or other state model). It was suggested that manufacturers may be willing to pay for the

handbook or perhaps funding could be secured from EOEEA via the Office of Law Enforcement.

- General Agreement: An Oversight/Advisory Committee would need to be established to monitor curriculum, materials distribution and third party trainers.

2. Penalties

Concept Summary: - Establish hierarchy of penalties for offenses to include fines, jail and seizure of vehicle; serious violations would carry same penalties as existing boating statutes; possible penalties would include loss of drivers license, fines up to \$5000, imprisonment up to 15 years and confiscation and forfeiture of vehicle; other violations have increased penalties and possible forfeiture of vehicle; the need to remove decriminalization of violations; higher penalties for operation in sensitive areas; parent/OHV owner liable for damages caused by minor (under 18); penalties used to fund enforcement and restitution.

Bruce Bennett, Gary Briere, Frank Frey and Janet Morrison had a separate meeting about this and developed the concepts presented. Violations were broken down into two categories: serious and minor. The serious violations carry the same penalty as existing boating statutes, which mirror existing motor vehicle statutes and penalties.

- General Agreement: Chapter 266 Section 121A/ the motor vehicle trespass laws need to be further explored and addressed in our recommendations.
- Strong Agreement: There should be graduated penalties and fines based on the seriousness of the violation. It was suggested that riders would be more apt to embrace the penalties if they are tiered. It was suggested that tiered penalties should have exceptions to respond to an egregious first time offense. We need to define egregious offense.
- Strong Agreement: Strong penalties are appropriate for major violations of operating under the influence, operating to endanger, leaving the scene of an accident, and vehicular homicide.
- Strong Agreement: Remove decriminalization limitations found in Ch. 90C.
- Suggestion: Review overlaps between existing law such as Wetlands Protection Act, existing motor vehicles and trespass laws regarding public ways and issues relating to private property to ensure that we are not duplicating existing legislation. We need to clarify and define “driving to endanger”.
- General Agreement: Restitution from perpetrator needs to be addressed. Discussion centered on creating a separate fund for restitution. Details to be explored include determining who is eligible to receive the funds, how much, who makes these decisions, administers the fund, what if fund is depleted, etc. There was concern that a judge may not hold owner/operator/parent liable or levy a fine, if a restitution fund exists.
- General Agreement: The adult responsible for the children operating an OHV who cause damage or violate laws shall be responsible for fines, suffer penalties or pay restitution. Additionally, we need to influence young children to be responsible for their own actions and suggested consequences included community service, repeating safety course, suspend ability to ride for 6 months, and administrative hold on drivers license.

- Suggestion: There needs to be clarification of which penalties could result in forfeiture of vehicle. Concern that confiscation/forfeiture issue would make legislation difficult to pass. It was suggested that forfeiture would be for extreme cases and associated with conviction; confiscation and towing an option for driving on lands where not allowed. If forfeiture and restitution are not included in the bill, than judge may not impose them as penalties.
- General Agreement: include harassing domestic animals as a minor violation.
- Suggestion: Impose higher penalties for operation in protected areas, watersheds, and archaeological areas. Concern was expressed riders won't necessarily realize they are approaching sensitive ecological areas and that course will not be sufficient teach identification of wetlands, rare species habitats, etc. Ch. 90B doesn't specifically limit riding in wetlands or environmentally sensitive areas. Concern was expressed that landowners may not know they have sensitive habitat on their property. It was also noted that judges may consider violations of other regulatory entities and impose the corresponding penalties as well. There was wide disparity of agreement on this issue.
- General Agreement: Penalties for Operating Under the Influence can include loss of driver's license. In the case of children not yet licensed, can administratively put an alert to postpone or loss of right to obtain a driver's license. There were concerns that the legislature would have a hard time connecting the loss of a driver's license with less serious violations.
- Suggestion: To deflect opposition to the legislation, it was suggested we need a clear definition of operating to endanger
- Suggestion: Sharl Heller presented recommendations from the Friends Groups that included:
 - Owners of host houses, i.e., private property where OHV riders gather before entering public lands or private property should be accountable and subject to fines
 - Harsh penalties should be imposed for the removal of spark arresters.
 - Riding on any trail or public land not designated for motorized trail use should be a violation.
 - Question whether 150 feet setback from dwellings is reasonable to protect landowners from OHV noise.

3. Registration, Licensing, Permitting and Insurance

Concept Summary: Registration will be required for all OHVs purchased in MA; fees committed to dedicated fund for enforcement and trails; reciprocal agreements with other states; convenient registration; identify riders by adequate size and legibility of license plate and readily available database; exempt vehicles used exclusively for agricultural use; increase registration fees to level that would fund enforcement and trails; require insurance coverage

- Strong Agreement: Registration fees to fund education and enforcement.
- General Agreement: Registration plates should be large enough so that the numbers are easily identifiable. It was suggested the size of motorcycle plate would be sufficient.
- Suggestion: Registration is an implied tax, that you will receive something for the registration. We need to explore what other states do.
- Suggestion: Registration fee should be \$35 with monies directed to enforcement; \$10 fee at purchase for trail maintenance; an additional \$5 fee to DCR to purchase lands for OHV trails. It was noted that generally fees are regulated by agency and approved through the Executive Office of Administration and Finance, not through the legislative process.

- Suggestion: Recreation vehicles should require titles. Titling procedures could be administered by the Office of Environmental Law Enforcement the Registry of Motor Vehicles or towns/counties.
- Suggestion: Registration should be made easier by increasing number of places to register as well as at the place of purchase. It was also suggested that the Commissioner be encouraged to negotiate reciprocal registrations with other states. Perhaps users from other states to purchase trails pass in order to utilize our trails.
- General Agreement: Include language indicating that we would support an amendment to insurance regulations to accept and encourage affordable deregulated insurance for OHVs.

4. Noise/Sound

Concept Summary: Every OHV must be equipped with muffler maximum noise of 96 decibels at 20 inches.

- Strong Agreement: OHVs operated in MA must be equipped with muffler device for 96 decibels or less.
- Suggestion: private landowners who create their own trails need to be liable for the effect the noise has on surrounding neighbors. There was discussion regarding existing DEP regulations stating that anything louder than 10 decibels above ambient background noise is a violation. This area may need to be explored further.

5. Funding

Concept Summary: Registration fees dedicated to support enforcement and trails development and maintenance; trail maintenance assessment program to be pursued as secondary funding source for trail maintenance

- Strong Agreement: Remove from discussions reference to gas tax for OHV enforcement and trail maintenance due to the likelihood it would not receive support from the Legislature.
- Strong Agreement: Funds collected from registration fees shall be committed to a dedicated funding source and restricted for enhancing enforcement and the development and maintenance of OHV trails.
- Suggestion: Need firm strategy to keep funds including a “trigger” that something “bad” would happen if funding is diverted.
- General Agreement: The Northeast ATVers and NETRA maintain a strong commitment that a sticker program overseen by the Commonwealth be instituted and monies collected to go toward enforcement and trails maintenance and development.

6. Equipment Age/Size/Use Limitations

Concept Summary: Follow Consumer Product Safety Commission recommendations for child age and ATV size; children under 14 must be directly supervised; children under 12 may not operate OHV on DCR property; No one under 10 may operate OHV; no passengers unless vehicle is designed and equipped for more than one person.

- Strong Agreement: Safety of children is major concern. Adult supervision and responsibility of children needs to be linked.

- Current regulations state, “No person under ten years of age shall operate a snow vehicle or recreation vehicle under any circumstances.” Concern that children under age 10 will continue to ride, but they will not be educated.
- Suggestion: At a minimum, use the national recommendations of size/height that are displayed on each machine.
- Suggestion: Need to explore what can be done to make people feel better about protecting the safety of younger riders. There were questions about age requirement v. size/weight of child, i.e. not all 10 year olds are the same size. It was suggested that age/size/use be addressed in regulation, rather than statute.
- Suggestion: Require kill switches or other safety devices
- General Agreement: This topic needs further exploration and discussion. Send comments or suggestions about age/size/use to Gary Briere and Bill Logue.

7. Public Ways

Concept Summary: No operation on public ways except in marked crossings between lawful trails and non-maintained public ways municipally approved; operation prohibited on public ways except unpaved roadway to travel between trailheads and any way that is not maintained or used for the operation of conventional motor vehicles.

- General Agreement: Further discussion is needed regarding trespassing on private property and laws that currently exist. A sub-group will meet to further discuss this issue to be circulated via email and presented at next meeting.
- Concern that in some instances on DCR’s trail system there is as much as a mile between designated trails and riders must drive on public ways to reach next trailhead.
- Discussion to continue at next meeting.

Next Steps / Next Meeting

- Distribute minutes for 10/12/07 meeting
- Draft and distribute agenda for next meeting on 10/26/07
- Next meeting October 26, 2007
- Trespass issue to be discussed and sent out via email
- Draft definition of off-highway vehicle.
- Send comments regarding age/size/use to Gary Briere and Bill Logue

Handout distributed at meeting:

MA OHV Enforcement Working Group –

The following document offers a series of statements or concepts regarding OHV operation and enforcement that have been introduced during the OHV Enforcement Working Group discussions or through member research. The purpose of this document is to allow the group to explore and refine levels of agreement in each of these focus areas.

Recommendations by Area

1. Education and Training
2. Penalties
3. Registration Licensing, Permitting and Insurance
4. Noise/Sound
5. Funding
6. Equipment Age/Size/Use Limitations
7. Public Ways
8. Other

Education and Training

- ☐ No person born after January 1, 1988 (19 or younger) shall operate an all-terrain vehicle or off highway motorcycle unless they have completed a state-certified rider safety and responsibility program.
 - ☐ A certificate of completion must be carried with the operator.
 - ☐ Operator education programs must be funded through manufacturers or other non-public sources.
- ☐ OHV manufacturers and dealers shall be required to promote safe and environmentally responsible use of OHV's by providing in writing to each purchaser at the point of sale all safety manuals, as well as documentation on the full extent of state restrictions on the use and operation of OHV's.
- ☐ OHV clubs, dealers, and other stakeholders shall promote safe, environmentally sustainable and recreationally responsible use of OHV's through a variety of actions including advertising, educational programs and materials, trail patrols, and other means.

Penalties

- ☐ Establish a hierarchy of penalties for OHV offenses to include increased fines, jail, and seizure of vehicle.
 - ☐ Serious operating violations with OHV's would carry the same penalty as existing boating statutes, per M.G.L., Chapter 90B, Section 8(a)(1), Section 8A and Section 8B.

- Offenses include:
 - Operating Under the Influence
 - Operating to Endanger
 - Leaving the scene of an accident
 - Vehicular homicide
 - Unauthorized use
 - Penalties include:
 - Loss of drivers' license
 - Fines up to \$5000
 - Imprisonment up to 15 yrs.
 - Confiscation and forfeiture of vehicle.
- ☐ Other violations have increased penalties and possible forfeiture of vehicle.
 - Offenses include:
 - No registration
 - Operating on public way
 - Underage operation w/o supervision
 - Carrying unenclosed firearm
 - Damage to planted areas
 - Harassing wildlife
 - Operating on property of another w/o permission
 - Failure to stop, identify self for officer or owner
 - Penalties include:
 - Fines up to \$2500
 - Imprisonment up to 1 year
 - Confiscation and forfeiture of vehicle if convicted
 - Restitution for damages
- ☐ Remove the decriminalization limitations found in Chapter 90C
- ☐ Higher penalties should be imposed for operating an OHV within sensitive ecological, historic or public health resources such as priority habitat, archaeological sites or water supply lands.
- ☐ Any owner of an off highway vehicle or any person who gives or furnishes an off highway vehicle to any person and any parent or guardian responsible for the care of a minor under eighteen (18) years of age shall be liable with the operator for any damages caused in the operation of the vehicle or by this minor in operating any off highway vehicle.
- ☐ Penalties recovered shall be used to fund:
 - ☐ OHV enforcement.
 - ☐ Property and environmental damage fund accessed by public entities that cannot obtain restitution from the operator.

Registration, Licensing, Permitting and Insurance:

- ☐ OHV registration shall be required at the time of purchase for all OHV's sold in Massachusetts.

Provided that:

- ☐ Registration fees are committed to a fund dedicated and restricted to enhancing enforcement and the development and maintenance of OHV trails.
- ☐ Reciprocal agreements are established with other states offering riding opportunities to allow MA riders to register in only their home state.
- ☐ The registration process is more convenient including dealer registration.
- ☐ Identifying riders through registration is facilitated by
 - Ensuring that the license plate is of adequate size and legibility
 - Ensuring that the registration database is readily available to state and local law enforcement officials
- ☐ OHVs used for strictly agricultural use would be exempt from required registration through an owner "Declaration of Exemption" completed at the time of purchase
- ☐ Increase the OHV Registration fees to a level that will provide funding allocations for enforcement and the development and maintenance of OHV trails.
- ☐ All OHV's must have insurance coverage for public liability and property damage. Proof of insurance shall be required for ATV registration;
 - ☐ As per New York State, minimum required coverage is \$50,000/\$100,000 for death, \$25,000/\$50,000 for injury, and \$10,000 for property damage in any one accident.

Noise/Sound

- ☐ Every OHV operated in Massachusetts shall be equipped with an adequate and operating muffler device that shall preclude noise in excess of 96db(A) at a distance of 20 inches.

Funding

- ☐ Registration fees shall be committed to a fund dedicated and restricted to enhancing enforcement and the development and maintenance of OHV trails.
- ☐ A trail maintenance assessment program overseen by the Commonwealth shall be pursued to provide a secondary source of funding to support OHV trail maintenance.

- ☐ A percentage of state gas taxes shall be directed to enforcement and the development and maintenance of OHV trails.

Age/Size/Use Limitations

- ☐ The Commonwealth should follow Consumer Product Safety Commission recommendations for child age and ATV size.
 - o No one under the age of 16 shall be allowed to ride an ATV greater than 90cc.
 - o Children between the ages of 12 – 15 shall be allowed to ride an ATV between 70 and 90 cc
 - o Children between the ages of 6 and 11 shall be allowed to ride an ATV under 70 cc.
- ☐ Children under the age of 14 must be directly supervised by a person 18 years of age or older. (current regulation)
- ☐ Children under the age of 12 may not operate an OHV on DCR property.
- ☐ No one under the age of 10 years of age may operate a recreational vehicle. (current regulation)
- ☐ No operator of an ATV shall carry a passenger or occupant when operating the vehicle unless the vehicle is designed and equipped by the manufacturer to carry more than one person.

Public Ways

- ☐ No operation is permitted on public ways, except on:
 - o Municipally approved and marked crossings between lawful riding areas.
 - o Non-maintained public ways municipally approved for OHV use.
- ☐ OHV operation on public ways is prohibited except that a recreational vehicle may be operated by a motor vehicle licensed driver (or under the supervision of a licensed driver) on:
 - o An unpaved roadway if traveling from one trailhead to another
 - o Any way that is not maintained or used for the operation of conventional motor vehicles

Other

- ☐ Establish a Massachusetts OHV Committee to develop, review and implement safety/educational programs and advise the Commonwealth on issues of OHV enforcement, management and use.